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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/212,857 12/17/98 MOURA

E 18

EXAMINER

LM02/0609

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ART UNIT

PAPER NUMBER

2732

DATE MAILED:

06/09/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/212,857

Applicant(s)

Moura et al.

Examiner

S. Hom

Group Art Unit

2732

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 12-17-98
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-65 is/are pending in the application.
- Of the above claim(s) 1-20, 22-25 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 21, 26-65 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of References Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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**DETAILED ACTION**

***Specification***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
3. The disclosure is objected to because of the following informalities: in line 1 of the specification insert the sentence: ---This application is a continue of application no. 08/703,767 filed August 27 1996.  
Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. Claims 21 and 26-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point

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out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21 line 4 which recite "a first computer node" is not clear as to whether it is reciting ---said first computer node--- of lines 1-2 or what. In claim 21 line 6 which recite "an information amount" is not clear as to whether it is reciting ---one of said information amounts--- or what. In claims 26 and 36 line 7, claims 31 and 41 line 8, and claims 46, 51, 56, 61 lines 5-6 which recite "a CATV network, or an over-the-air radio" is not clear as to whether it is reciting ---said CATV network, or said over-the-air radio--- of lines 5-6 or what. In claims 26, 51 line 9, claim 31, 36 line 10, claim 41 line 11, and claim 46 line 8 which recite "the remote interface" is not clear as to whether it is reciting ---one of said plurality of remote interfaces--- of claim 26 line 5 or ---said each remote interface--- of claim 26 line 6 or what. In claims 26, 51 line 12, claims 31, 36, 56, 61 line 13, claim 41 line 14, and claim 46 line 11 which recite "the data" is not clear as to whether it is reciting ---said downstream data--- or ---transferred data--- or what; further claims 26, 36, 51, 56, 61 lines 12 and 13, claim 31 lines 13, 15, and 16, claim 41 lines 14, 16, 17, and claim 46 lines 11, 12 which recite "the

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associated remote device" lacks clear antecedent basis because no associated remote device have been previously recited in the claim and therefore the limitation is not clearly understood. In claim 26 line 14, claims 31, 61 line 17, claims 36, 56 line 15, claim 41 line 18, claim 46 line 13, claim 51 line 16 which recite "an amount" is not clear as to whether it is reciting ---said amount--- of claim 26 line 9 or what. In claims 27, 28, 30, 32, 33, 37, 38, 41, 43, 48, 53, 55, 58, 63, 65 lines 2-3 which recite "the remote interface" and "a remote interface" respectively, is not clear as to whether it is reciting ---said each remote interface--- or what. In claims 28, 33, 38, 43 line 1 which recite "a sender" is not clear as to whether it is reciting ---said sender--- or claim 26 line 13 or what. In claims 29, 30, 34, 35, 39-40, 44, 45, 49, 50, 54, 55, 59, 60, 64, 65 lines 2-3 which recite "the other remote interfaces" lacks clear antecedent basis. In claims 26, 31, 36, 41, 51, 56, 61 lines 9-10 and claim 46 line 7 which recite "an amount" is not clear as to ---an amount of data or information--- or ---an amount of credit--- or what.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple

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assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21, 26-65 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-67 of copending Application No. 08/703,767. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 66 of copending Application No. 08/703,767 which recite a high speed downstream channel and a lower speed upstream channel for distributing data packets between a server and remote clients clearly anticipate the two way asymmetric network communication system for transferring data between a server and remote devices for supporting server-client communication as now claimed. Further, claim 66 recite the upstream and downstream channels lies in a communication medium selected from one of a CATV distribution network or over-the-air wireless network or direct broadcast satellite communication network as now claimed;

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claim 66 recite the network manager for issuing credit control packets indicative of respective volumes of data the remote clients are respectively authorized to send clearly anticipate the control system acting to generate a signal that determines an amount the remote may send during a certain period, claim 57 which recite the step of sending a message to the second node indicative of the amount of information remaining to be sent and returning the credit to the second node when the first node has no information to transfer clearly anticipate the sender that sends data from the remote device over the upstream channel, an amount of sent data being governed by the respective signal as in claims 21 and 26-61.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Bustini et al.

Bustini et al. disclose all the subject matter now claimed. Note col. 12 lines 24-48 which recite a credit manager in a computer network for controlling the rate of transmitting cells for each connection by the cell transmitter via specifying the maximum number of cell transmission credits that may be accumulated by a given virtual connection clearly anticipate the method of credit administration between computer nodes for information amounts having predetermined information credit values including the step of sending a credit to a computer node, receiving the information amount corresponding in value up to the amount of credit as in claim 21. Further, col. 3 lines 38-64 which recite that at the destination end system an acknowledgment message is generated if no error is detected and is sent together with the congestion indication bit status associated with the acknowledged packet thereby controlling the transmission rate and hence bandwidth by the limiting actions of acknowledgments and window length clearly reads on the step of sending a done signal to the computer node indicative of the credit received less the amount of information received as in claim 21.



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**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hershey discloses a datagram message communication service employing a hybrid network.

Bingham et al. disclose methods for coordinating upstream discrete multi-tone data transmission.

Oprea discloses a method and apparatus for reassembly of data packets into messages in an asynchronous transfer mode communications system.

8. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 305-9051, (for formal communications  
intended for entry)

**Or:**

Art Unit:

(703) 308-5403, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2021 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist (703) 305-4700).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick Hom whose telephone number is (703) 305-4742.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4750.



**DANG TON  
PRIMARY EXAMINER**

SH

May 26, 1999